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Via Electronic Comment Filing System

September 2, 2010

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20554

In RE: CG Docket No. 10-51

Dear Ms. Dortch:

Attached for submission to the Commission are the *Reply Comments of Say-Hey, Inc.* in the above-referenced matter. Electronic copies of this filing have been served on the Commission staff and duplication contractor as set forth at para. 82 of the Commission's June 28, 2010 *Notice of Inquiry* in this matter.

Thank you for your attention to this matter. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

Andrew O. Isar

Regulatory Consultants to
Say-Hey, Inc.

Attachment

cc: Mark Stone, Consumer and Governmental Affairs Bureau (via electronic delivery)
Nicholas Alexander, Wireline Competition Bureau (via electronic delivery)
Diane Mason, Consumer and Governmental Affairs Bureau (via electronic delivery)
Nicholas A. Degani, Wireline Competition Bureau (via electronic delivery)
Best Copy and Printing, Inc. (via electronic delivery)

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Structure and Practices of the Video Relay)	CG Docket No. 10-51
Service Program)	
)	

REPLY COMMENTS OF SAY-HEY, INC.

Say-Hey, Inc. (“SHI”), by its regulatory consultants and pursuant to the Commission’s June 28, 2010 *Notice of Inquiry* in the above captioned proceeding,¹ hereby submits the following brief reply comments regarding the Commission’s “fresh look” at current video relay service (“VRS”) rules.² SHI is a new VRS market entrant.³ SHI shares the Commission’s interest in maintaining an “effective, efficient, and sustainable [program] in the future, and looks forward to being a contributing industry participant and responsible provider of VRS services. Although SHI is a new entity, its senior managers have long-standing industry experience, and are members of the Deaf community. SHI’s senior managers have witnessed – both as VRS consumers and service providers – the issues that have detracted from, if not undermined, the

¹ See, e.g. *In the Matter of Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, *Notice of Inquiry*, FCC 10-111 (rel. June 28, 2010) [“NoI”].

² The following represents SHI’s reply comments on issue of particular sensitivity to the Company. SHI’s absence of comment on a topic or reply to other parties’ comments is not intended to suggest tacit support of, or objection to, others’ comments or positions.

³ See, e.g. *Application of Say-Hey, Inc. for Eligibility to be Compensated From the Interstate Telecommunications Relay Service Fund For the Provision of Video Relay Services and IP Relay*, CG Docket No. 03-123 (June 22, 2010). SHI is a Deaf-owned and operated entity whose goal is to achieve effective communications for its subscribers and to have a positive impact in improving the quality of life for the communities which it serves. Its management team is comprised of relay service veterans who have a solid understanding of the Community and market. Say-Hey also provides community interpreting services and remote video interpreting services to businesses and consumers separately from the provision of relay services. SHI operates a call center which employs qualified interpreters and adheres to all VRS standards.

Commission's expressed objectives in this proceeding. Through these brief reply comments, SHI underscores key points made by commenting parties that resonate with SHI as a means of achieving an effective, efficient, sustainable, and competitive VRS program.

SHI generally maintains that clear, unambiguous regulations and procedures, the ability to seek Commission guidance, certainty in Commission regulation, and strict Commission enforcement action are key ingredients to an effective, efficient, and sustainable relay program. Commenting parties have thoroughly addressed the variety of issues raised in the NoI that work toward achieving this goal. Though parties do not unilaterally agree on each approach, one of the most important steps the Commission can take in this proceeding that parties seem to unilaterally embrace is to reestablish regulatory certainty. SHI believes that it has been the lack of such certainty, exacerbated by accelerated changes in delivery technology and competition that has contributed to some of the issues experienced in the industry, and served as an opportunity by disreputable individuals to pursue self-serving interests. By now reestablishing regulatory certainty, consistent with the following considerations, the Commission can ensure the integrity of the Program, can enable providers to move forward in providing responsible service and innovation to meet market demand, and moreover, can contribute towards reestablishing consumer trust the program's viability to meet their needs.

Certification.⁴ Several parties have proposed methods for Program eligibility certification, each with variations of a theme *inter alia* regarding meeting mandatory minimum standards ("MMS"), experience, qualifications, and financial viability. Convo and others proposes provisional certification as a means for ensuring that only reputable providers who have

⁴ NoI at 7.

demonstrated their compliance with the Commission's MMS⁵ ⁶ and Fund administrator practices and policies may ultimately be granted eligibility. SHI agrees.⁷

SHI recognizes the Commission's concerns precipitating the extended hiatus in granting pending applications for Fund eligibility. Yet, pending Commission action, applicants face tremendous challenges and uncertainty, which has the potential of precluding their entry altogether. Provisional authority provides a bridge to certification that enables prospective providers to demonstrate their capabilities and representations of compliance to the Commission. Provisional authority would enable the Commission to maintain a direct relationship with provisional providers, maintain full jurisdiction over such providers, and immediately terminate the providers' ability to draw from the Fund following demonstrated, uncorrectable, and/or major breaches in the providers' MMS or policy compliance. SHI agrees the establishment of provisional authority under specific time frames and compliance metrics should be adopted to enable new market entrants to serve the Deaf community and demonstrate their capability to do so responsibly, as other parties suggest.

Company-Specific Compensation.⁸ SHI maintains that the current tiered compensation system is reasonable, effective, and should be maintained. Despite the potential conceptual allure of Company-specific compensation, the tiered compensation structure is more reflective of the natural grouping of service providers in the industry. Further, the tiered system precludes the potential for company manipulation of costs to derive higher compensation levels, because of

⁵ See e.g. *Comments of PAH! VRS and Interpretel, LLC* at 23; *Convo Communications, LLC* at 21 ("Convo").

⁶ 47 C.F.R. §64.604 *et. seq.*

⁷ SHI does not, however, agree with Convo's proposal to establish some arbitrary minimum usage level. Although SHI acknowledges that some reasonable amount of usage is helpful in an analysis of a prospective eligible provider's ability to comply with MMS, the prospective provider should not be rigorously held to a specific usage level. A provider reaching, say, 40,000 minutes may be equally qualified, if not more so, than one having achieved a 50,000 minute level. Usage may serve as a relative indicator of capability but not a rigorous metric to gage capability.

⁸ *NoI* at 13 to 16.

the averaged costs that comprise compensation levels under tiered approaches.⁹ The only possible exception may be for those providers comprising the top tier, where compensation may be more directly attributable to costs.

Outreach and Marketing Costs.¹⁰ Outreach and marketing costs should be compensable from the Fund. These are necessary costs of providing VRS.¹¹ There are still many Deaf and hard of hearing individuals that do not understand what options are available to them. Though the Commission has taken commendable efforts to inform the public, many members of the public may not necessarily know to go to the Commission's web site, or in some cases, not have Internet access at all. Providers have the capability to reach members of any given community through direct contact and other forms of outreach.

SHI agrees that a clear "outreach" definition is imperative consistent with the clarity of approach SHI generally maintains must be established to maintain an effective program. SHI maintains that "outreach" should include any efforts by a provider to offer general information regarding the program and access, whether implemented as part of a marketing campaign or otherwise.¹²

Research and Development Costs.¹³ Much has been said of late about the need for the Commission to promote investment in the broadband arena. Such is the case in the relay industry as well. We have witness an explosion of applications for mobile devices in the recent past and rapid improvements in Internet Protocol-based VRS platforms and technology. The

⁹ See, e.g. *Comment of CSD VRS, LLC* ("CSD VRS") at page 17.

¹⁰ *NoI* at 17.

¹¹ See, e.g. *Comment of Purple Communications* ("Purple") at page 12. "VRS use will not continue to grow if marketing and outreach expenses are eliminated."

¹² *Convo* proposes a formulaic approach to outreach and marketing costs. SHI alternatively suggests that a cap on marketing and outreach expenses based on historical expenditures by providers would reasonable preclude incentives to inflate marketing and outreach expenses. *Convo*, pp. 14 and 15.

¹³ *NoI* at 20.

Commission itself recognizes that “newly emerging communication technologies could offer significant potential for achieving greater functional equivalency for VRS users.”¹⁴

SHI agrees that in light of the significant opportunities that development of new and emerging technologies offer to bring us closer to “functional equivalency,” it is entirely appropriate for providers to be compensated for the research and development efforts they undertake. Purple correctly notes that reimbursement of such costs is an issue of reasonableness albeit based on achievement; “The Commission should compensate a provider for research and development so long as the provider paid proper regard to the costs incurred versus the benefit to be achieved.”¹⁵

Yet SHI believes that compensation should be discrete and limited under some formulaic approach to quantify allocations made to providers for research and development is also appropriate, as Convo supports through the *Business Insider* report, rather than be open-ended.¹⁶ Further, SHI supports establishing a clear definition of what activities would constitute research and development, again, to mitigate issues that could arise in the absence of clear, explicit guidelines.

Videophone Equipment.¹⁷ SHI generally concurs with the “voucher” program proposed by several parties.¹⁸ SHI remains concerned that company-specific equipment has for too long served as an impediment for the Deaf community to avail itself of competitive alternatives.¹⁹ A

¹⁴ *Id.*

¹⁵ Purple, page 11. Purple also correctly notes that “R&D is recognized as a legitimate expenditure of Part 32 [of the Commission’s rules]... and is necessary to meet ADA requirements. *Id.* at 32.

¹⁶ Convo, page 16.

¹⁷ *NoI* at 21.

¹⁸ *See e.g.* Purple, page 19; CSD VRS page 24.

¹⁹ *Id.*

voucher program will provide incentives for the Deaf community to consider alternative providers while, *inter alia* eliminate the excess waste of video phones subscribers own.²⁰

Protection of Providers from Under-Compensation and Avoidance of Over-Compensation.²¹ SHI does not support the true-up process and suggests the current system works well and reimbursement rates should be established based on historical costs and anticipated inflation. As CSD VRS notes, a true-up process is unnecessary if the compensation methodology is properly designed.²² And, as Purple suggests, a true-up process would not incent providers to reduce costs and operate more efficiently, while at the same time demanding “intense regulatory oversight.”²³ Before consideration of any true-up process, SHI urges the Commission to complete its review of the compensation methodology, as noted.

The Supply of Video Relay Service.²⁴ The Commission’s questions regarding single source providers²⁵ are disturbing, simply in the fact that the Commission would consider sole source suppliers in any area. The U.S. has prided itself on the development of meaningful competition in markets and has a history of guarding against monopolies. The Commission has a long history of supporting competition in the provision of telecommunications services. The Deaf Community has expressed its support of competition.²⁶ It is unclear how/or why, the Commission would even consider single source provision of services and equipment in any form.

Numerous arguments can be made in favor of monopolies: a degree of efficiency, however dubious, simplified administration and oversight of the provider, and standardization,

²⁰ In one instance, for example, SHI identified five separate video phones used by a single family. Purple’s one qualified videophone every two years is a reasonable starting point for consideration.

²¹ *NoI* at 22.

²² *See, CSD VRS* at 25.

²³ *See Purple* at 34.

²⁴ *NoI* at 16.

²⁵ *Id.*, para 52.

²⁶ *See* transcript of the Commission’s December 17, 2009 VRS workshop.

among others. Yet the pitfalls far exceed any of these purported benefits. Were the monopoly provision of telecommunications services effective generally, the 1984 Bell System Divestiture would never have taken place.

The benefits of competition are legion. There is an ample record of this before the Commission and need not be argued here. Even Sorenson, the dominant carrier in this industry acknowledges that “there is no reason for the Commission unilaterally to limit the alternatives available to VRS providers.”²⁷

The Incentives of Providers; Reverse Auctions.²⁸ SHI maintains that reverse auctions constitute nothing more than an effort to limit competitive entry, and ensure that only the largest, longest established dominant providers will ever have an opportunity to “win” an auction.²⁹ This is diametrically contrary to the precompetitive policies promoted by the Commission. SHI readily acknowledges that reverse auctions are used effectively in the wireless industry as a means to promote facility deployment and infrastructure development. The VRS industry is not similarly situated, witness the ability of smaller companies to be able to enter the market and utilize technology and the Internet to provide services. Any effort to limit competition will undermine the gains that have been made in meeting functional equivalency and consumer choice, and has no place in the discussion of a fresh look for VRS services.

Jurisdiction Separations.³⁰ SHI agrees that the current process in effect today, remains viable. The introduction of state VRS oversight for non-state contract providers that would be introduced with imposing additional contribution responsibility on the states opens up a Pandora’s box of regulatory challenges not the least of which could include a patch work quilt of

²⁷ *Comments of Sorenson Communications, Inc.* (“Sorenson”) at 40.

²⁸ *NoI* at 68.

²⁹ *See CSD VRS* at 48.

³⁰ *NoI* at 70.

state regulatory approaches, the added cost to providers and consumers of regulation, and the risk of a conflict of interest in regulators – not necessarily state regulatory utility commissions – who would regulate competitors of the default contract providers.³¹ Alternatively, states could limit the number of providers available – consistent with the current contract practice – creating the very limitation of competition addressed *supra*.³²

SHI supports the Commission’s “fresh look” at VRS in an effort to ensure the continued effectiveness, efficiency, and sustainability of the program. The greater the clarity of regulations and guidelines ultimately enacted, the greater the regulatory stability, certainty, and provider ability to responsibly serve the public. Though it is clear that the Commission is considering a myriad of approaches to the provision of VRS, it must remain supportive of promoting competition and consumer choice as it has done in other markets. Any effort to limit competition directly or through the prospect of state oversight is a dangerous step back to the days of the Bell System monopoly, now more than 25 years behind us. To that end, SHI urges the Commission to act in accordance with those proposals made by commentators that promote competitive entry, promote innovation, and the competitive provision of VRS consistent with the specific recommendations made herein.

(Signature on following page)

³¹ See *CSD VRS* at 50, 51.

³² See *Convo* at 45.

Respectfully submitted this 2nd day of September, 2010.

SAY-HEY , Inc.

A handwritten signature in cursive script, reading "Andrew O. Isar". The signature is written in dark ink and is positioned below the company name.

By:

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Regulatory Consultants to
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